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Chairman: Mr. Enkhsaikhan ..... (Mongolia)

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The meeting was called to order at 3.10 p.m.

Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-first session *(continued)* (A/53/17)

1. **Mr. Mishra** (India) said that the preparation of a draft legislative guide on build-operate-transfer projects was particularly timely since such projects were an important means of accelerating infrastructure development by attracting private investment, international financing and up-to-date technology. The guide should be designed to promote private investment and protect the returns of investors without conflicting with the public policies of the host Government or the economic interests of the end users. His delegation welcomed the Commission's decision to make use of the knowledge of experts in the field.

2. With respect to assignment in receivables financing, he noted that while the Working Group on International Contract Practices had made substantial progress in several areas, important issues such as the scope of the draft convention, issues arising in the context of the protection of the debtor and conflicts of priority among several claimants remained to be resolved and should be discussed by the Commission and the Working Group with a view to the adoption of the draft convention by the year 2000.

3. His delegation agreed with the Working Group on Electronic Commerce that the preparation of draft uniform rules on digital signatures and certification authorities was feasible but that it would be premature to determine the exact scope and form of such rules.

4. The suggestions made by leading arbitration experts at the special commemorative New York Convention Day deserved further consideration.

5. Lastly, he expressed appreciation for the Commission's training and technical assistance programmes and its dissemination of court decisions and arbitral awards relating to its various conventions and model laws. He hoped that the future work of the Commission would benefit all States, particularly developing countries and would help to establish uniformity in international commercial and trade laws.

6. **Mr. Tejeira** (Panama), speaking on behalf of the Rio Group, said that his delegation welcomed the increasing number of governmental and non-governmental organizations which had displayed interest in the Commission's work, thereby increasing cooperation, reducing duplication of effort and promoting the adoption of the legal instruments developed by the Commission. However, adoption of the instruments listed in paragraph 246 of the report of the Commission (A/53/17) was far from universal. At a time when the movement towards an international free market was proceeding apace, it was essential to consolidate a uniform system of trade law through the adoption of those instruments and to provide technical assistance for that purpose. He hoped that there would be wider participation in the Commission's seminars and briefing missions and welcomed the secretariat's search for new forms of technical assistance in order to improve the legal framework for international trade and investment.

7. The Rio Group considered that the draft legislative guide on privately financed infrastructure projects should be accompanied by model legislative provisions.

8. In the field of electronic commerce, he welcomed progress in the preparation of uniform rules on the legal issues of digital signatures and certification authorities and the addition of a new article 5 *bis* to the Model Law on Electronic Commerce. He noted that a number of States were considering incorporating the provisions of the Model Law into their internal legislation and hoped that the principles embodied therein would soon achieve universal application.

9. He was pleased that the Commission had completed its consideration of the issue of incorporation by reference in data messages since recognition of the full legal effectiveness of such incorporation would promote greater confidence in international commercial transactions.

10. His delegation had noted with interest the proposal that the Working Group on Electronic Commerce should consider preparing an international convention based on the provisions of the Model Law on Electronic Commerce. However, despite the need for binding legal instruments in the field of international trade relations, it was important to avoid overregulation and, in any case, it would be better to allow time for more widespread enactment of the Model Law itself.

11. He hoped that the draft convention on assignment in receivables financing would be completed in 1999 since its adoption would facilitate the granting of credit at more favourable interest rates.

12. His delegation welcomed the holding of the special commemorative New York Convention Day and the Uniform Commercial Law Information Colloquium, and hoped that the reports on those subjects would soon be issued. It was also pleased that the Commission was working to fill the gaps in existing transport legislation.

13. **Ms. Lehto** (Finland), speaking on behalf of the Nordic countries, said that the Nordic countries fully endorsed the

statement made by the representative of Austria on behalf of the European Union at an earlier meeting.

14. While the Nordic countries favoured the development of a draft legislative guide on privately financed infrastructure projects, it was important to prevent the draft from becoming excessively broad and detailed, and, consequently, less flexible and useful to national authorities and legislative bodies wishing to establish a legal framework for the promotion of infrastructure development through private investment.

15. She was pleased that the Commission had encouraged the Working Group on Electronic Commerce to continue its preparation of the draft uniform rules on the legal issues of digital signatures and certification authorities, without which it was difficult to guarantee a reliable environment for commerce in open networks, and hoped that that project would be provided with the necessary resources. She also hoped that a widely acceptable draft convention on assignment in receivables financing would soon be completed.

16. In the field of training and technical assistance, the Nordic countries welcomed the secretariat's dissemination of information on the legal texts produced by the Commission and noted that it was essential for the case law in that area to be made available through the Internet.

17. Lastly, she noted that the special commemorative New York Convention Day and the Uniform Commercial Law Information Colloquium had provided an opportunity for dialogue between Government representatives and experts on issues of common interest and had demonstrated the significance of United Nations work in the field of international trade law.

18. **Mr. Tarabrin** (Russian Federation) said that his delegation appreciated the results of the Commission's work in 1998 and the activities of its working groups and secretariat. In focusing on relevant issues and producing concrete results in the form of legal texts having practical value, UNCITRAL was exercising its mandate properly and making a genuine contribution to the unification and progressive development of international trade law.

19. His delegation noted with satisfaction the commencement of the work of preparation of a legislative guide on privately financed infrastructure projects. That document which elaborated the elements of a universal mechanism for the creation of a favourable investment climate, providing guarantees to potential investors, was of significant value to his country. His delegation was prepared to take an active role in the preparation of the guide with a view to its early adoption.

20. His delegation supported the efforts of UNCITRAL and its working groups to prepare legal texts on electronic signatures. The establishment and development of international legal norms regulating commercial operations in cyberspace, which for all practical purposes eliminated borders, shortened geographical distances and increased the number of participants in commercial transactions, was acquiring ever greater significance for the development of international trade cooperation and should be one of the priority areas of work undertaken by UNCITRAL in the new millennium.

21. The results of the work of the UNCITRAL Working Group involved in the preparation of a draft convention on assignment in receivables financing were also of substantial practical value. His delegation looked forward to the effective conclusion of that work so that the draft convention could be submitted to UNCITRAL for adoption at its thirty-third session.

22. His delegation noted with satisfaction that a search engine had been placed on the Web site of the UNCITRAL secretariat on the Internet to enable users of case law on UNCITRAL texts (CLOUT) to carry out searches into CLOUT cases and other documents. That step would promote the clarification and dissemination of the work of UNCITRAL to a significant degree. In that connection, his delegation also supported the efforts of the secretariat to increase the availability of UNCITRAL documents through the Internet in all six official United Nations languages.

23. His delegation, which attached great importance to the publishing, training and technical assistance activities of the UNCITRAL secretariat, including the holding of regional seminars and symposia with the participation of countries whose economies were being integrated into the global market economy, shared the view that it was necessary to strengthen the financial and human resources of the secretariat through both budgetary and extrabudgetary funding.

24. **Mr. Yengejeh** (Islamic Republic of Iran) said that his delegation looked forward to completion of the draft legislative guide on privately financed infrastructure projects and emphasized the need to balance the objective of attracting private investment for infrastructure projects and protection of the interests of the host Government and users in order to make the project attractive to both Governments and the private sector. He hoped that the flexible approach adopted in the existing chapters, which allowed national authorities to take into account realities in the field while

implementing the legislative recommendations contained in the guide, would be maintained and supported the inclusion of model contractual clauses for infrastructure agreements.

25. He shared the general view that, at the current stage, the Working Group on Electronic Commerce should not be distracted from the preparation of draft uniform rules on the legal issues of digital signatures and certification authorities and that it should assume that those rules would take the form of draft legislative provisions; the technical background of electronic commerce was changing so rapidly that it would be premature to embark on drafting a convention.

26. He endorsed the Commission's request that the Working Group on International Contract Practices should complete the draft convention on assignment in receivables financing in 1999.

27. He welcomed the secretariat's establishment of a system for collecting and disseminating court decisions and arbitral awards relating to the conventions and model laws developed by the Commission, its decision to establish a Web site for case law on UNCITRAL texts and its activities in the field of training and technical assistance.

28. Lastly, he expressed concern at the lack of participation by developing countries in the Commission's activities and stressed the importance of meeting the secretariat's personnel needs.

29. **Ms. Steains** (Australia) said that Australia had a long history of involvement with the Commission's work and was committed to the goal of harmonizing international trade legislation.

30. The special commemorative New York Convention Day had provided an opportunity to consider whether the Convention should be reviewed in the light of new developments in the field of electronic commerce. Australia welcomed the joint project between the Commission and Committee D of the International Bar Association aimed at monitoring the legislative implementation of the Convention as a way of achieving greater transparency and uniformity in its interpretation and identifying possible areas for revision. Similarly, the Uniform Commercial Law Information Colloquium had provided an opportunity to consider, *inter alia*, the Model Law on Electronic Commerce and the Model Law on Cross-Border Insolvency and had been attended by Australian government representatives, lawyers and members of international dispute resolution institutions. The excellent attendance at both sessions had demonstrated the importance of the Commission's work.

31. However, Governments were responsible for determining whether implementation of the instruments developed by the Commission would improve their own legislation. To that end, Australia had established an Electronic Commerce Expert Group, which had concluded that specific legislation in that area was not necessary but that the existing legal framework should be amended on the basis of the Commission's Model Law on Electronic Commerce in order to remove impediments to such commerce. The Government had adopted that recommendation. In that regard, she commended the Working Group on Electronic Commerce for its focus on practical, technology-neutral solutions to current problems.

32. Her delegation was encouraged by the progress towards preparation of the draft legislative guide on privately financed infrastructure projects, the Commission's work in the area of training and technical assistance and the CLOUT project, which facilitated access to the most recent developments and research in the area of international trade. She also welcomed the Commission's decision to grant non-governmental organizations observer status at its meetings.

33. **Mr. Kawamura** (Japan) said that, although none of the issues discussed by the Commission at its thirty-first session had been finalized, significant progress had been made thanks, in large part, to the able leadership of its Chairman.

34. His Government greatly appreciated the Commission's contribution to the progressive harmonization and unification of international trade law, a process in which his country would continue to participate actively. It was important that the issues should be considered by legal experts from the legal and technical points of view, and that the work of the Commission should never become politicized.

35. With reference to privately financed infrastructure projects, his country was in favour of continuing work on the preparation of a legislative guide under the guidance of the secretariat and in close cooperation with experts from various countries, but without establishing a working group. It was to be hoped that, through close cooperation with other international organizations, the guide would be completed and would gain wide acceptance and be ready for adoption by the Commission at its thirty-second session.

36. The preparation of uniform rules on electronic signatures was an important aspect of electronic commerce and his delegation agreed with the representative of Austria, speaking on behalf of the European Union, in looking forward to further rapid progress in that field. At the same time, it was important to maintain technical neutrality and to ensure the autonomy of the parties.

37. His country fully supported the idea of preparing a uniform law on the subject of assignment in receivables financing in order to facilitate the development of international trade and to promote the availability of credit. However, his delegation was not in favour of embodying such a law in a convention, since each country had its own legal system in that field. Moreover, time was too short to prepare a convention by the year 2000 and the compromises that would be necessary to finalize a treaty text by that target date might mean that the text would be unduly complicated. The private international law provisions contained in the draft convention should be considered in close cooperation with the Hague Conference on Private International Law.

38. **Mr. Politi** (Italy) said that his delegation fully shared the views expressed by the representative of Austria on behalf of the European Union and wished merely to make a few additional remarks on the work of the Commission during the previous year.

39. The progress made in connection with the three areas of international trade law that had been considered by UNCITRAL at its thirty-first session, namely privately financed infrastructure projects, electronic commerce and assignment in receivables financing, was evidence of the efficiency of the Commission in fulfilling its mandate.

40. The legislative guide being prepared by UNCITRAL would be extremely useful to Governments in reviewing and modernizing their legislation on privately financed infrastructure projects. The guide should afford sufficient flexibility to national legislators, and his delegation was encouraged by the Commission's conclusions in that connection and looked forward to the preparation of the remaining chapters and to the revision of the existing drafts. It was important in that context to obtain the advice of outside experts from the public and private sectors, and to consult with experts from the developed and developing countries, as well as from countries with economies in transition.

41. The new provision on incorporation by reference to be added to the Model Law on Electronic Commerce was an improvement, especially in the more descriptive form adopted by the Commission. His delegation supported the Commission's efforts to prepare a set of uniform rules on the legal aspects of digital signatures and certification authorities and continued to believe that the issues of jurisdiction, applicable law and dispute settlement on the Internet could usefully be addressed at a later stage by the Working Group on Electronic Commerce.

42. The Commission had also made substantial progress on the preparation of a draft convention on assignment in receivables financing. His delegation was confident that the Working Group on International Contract Practices would conclude its work on the draft convention by 1999 so that it could be submitted to the Commission for adoption in the year 2000.

43. In conclusion, he reaffirmed the importance attached by his country to the work of UNCITRAL, which played an increasingly important role in a world characterized by the continuous expansion of international trade and economic relations. In that context, the further unification, harmonization and development of international trade law would do much to provide the world legal community with a sound and predictable normative framework.

44. **Mr. Prandler** (Hungary) said that his country had already associated itself with the statement made by the representative of Austria on behalf of the European Union and that his delegation only wished to add a few remarks on the report of the Commission.

45. The legislative guide on privately financed infrastructure projects would be an important legal document which would improve the international flow of private capital investment. In the view of his delegation the first four chapters considered by the Commission offered the necessary flexibility to enable the respective authorities to take into account their national legislation and their economic environment. However, his country felt that the number of recommendations should be reduced and it therefore supported the decision of the Commission to request the secretariat to draft legislative recommendations in the form of concise legislative principles. His delegation also agreed that the guide should be confined to giving legislative advice on privately financed infrastructure projects and should not attempt to give negotiating and contractual advice. He endorsed the statements made by other delegations to the effect that the guide should, where appropriate, refer to other publications containing contractual advice.

46. He also agreed that the drafting of further chapters of the legislative guide and the possible revision of existing drafts should be entrusted to a working group with the assistance of outside experts from the public and private sectors.

47. Referring to developing countries and countries with economies in transition, he expressed his delegation's support for the view of the Chairman of UNCITRAL that more effective use could be made of the documents and information amassed by the Commission. He urged the secretariat to continue its efforts to increase the availability of UNCITRAL documents on the Internet in all six official

languages of the United Nations; moreover, other tasks necessitated the further strengthening of the UNCITRAL secretariat, even within the limited resources of the United Nations budget.

48. On the subject of draft uniform rules on electronic signatures, his delegation believed that the Working Group on Electronic Commerce should concentrate on the preparation of draft uniform rules on electronic signatures and should not, at least at the present time, work on the preparation of a convention on electronic commerce.

49. With respect to chapter IV of the report (Assignment in receivables financing) his country supported the assumption of the Commission that the text being prepared by the Working Group should take the form of a convention. Notwithstanding the contrary view expressed by the representative of Japan, his delegation considered that such a convention would serve to resolve differences in various legal systems in the field of assignment and would provide the required element of certainty and predictability with respect to the availability of credit on the basis of receivables. He hoped that the Working Group would proceed with its work expeditiously so that the draft convention could be submitted for adoption by the Commission at its thirty-third session in the year 2000.

50. Finally, he associated his delegation with other speakers in commending the successful organization of New York Convention Day and the Uniform Commercial Law Information Colloquium during the Commission's last session.

51. **Ms. Willson** (United States of America) said that her delegation supported the work programme on methods of work of UNCITRAL, which had continued its tradition of technically focused and non-politicized work.

52. In connection with the existing work programme, she noted the continuing progress on the draft convention on assignment in receivables financing, which had the potential to increase significantly the availability of lower-cost commercial credit to countries where such credit was in short supply. The current draft sought to resolve a number of issues concerning competing creditors while providing appropriate protection for commercial debtors. It now contained optional sections to enable ratifying States to choose a particular legal system of priorities for creditors. However, whether or not such optional systems were chosen, the convention would be a valuable means of harmonizing laws of assignment with regard to receivables financing.

53. The work on legislative guidelines for privately financed infrastructure projects was intended to fill an important gap, namely the need for guidance as to legislative models for the provision of public services and infrastructure through private sector financing.

54. Since the completion by the Commission of its Model Law on Electronic Commerce in 1996, efforts had begun to reach consensus on international rules for electronic signature systems and message authentication. Consensus on that issue had been difficult in view of the wide differences of opinion between States as to the precise nature of such rules. Some States preferred a regulatory approach, while her country was one of those that considered that support for particular regulatory systems might not only be premature but might actually restrict the development of commercial markets. If progress proved difficult within UNCITRAL her country would propose the consideration of alternative topics pending a return to consideration of rules for electronic signature systems at a later date. Her country had also proposed that a convention should be prepared incorporating many provisions of the Model Law on Electronic Commerce, and was prepared to discuss other alternative topics.

55. The other aspect of the Commission's work concerned efforts by States to implement its work products, which had become increasingly important in an age of globalized impacts of commerce and trade. Her country was currently making such an effort with regard to three products of the Commission, and would be interested in receiving comments from other States as to whether they might be prepared to take similar action.

56. First, the Model Law on Cross-Border Insolvency, completed by the Commission in 1997, had become a front-line factor in assessing country risks for purposes of the extension of credit and the willingness to invest in such markets. Her delegation was pleased to note that the UNCITRAL Model Law, recast in the language of the United States Bankruptcy Code, might be enacted as law in her country in the near future. In that event, it was expected that the United States Congress would review the extent to which other countries had taken or were prepared to take similar action so that her country would not be alone in that effort. Her delegation would therefore welcome information as to intention of other Governments in that regard.

57. Secondly, the UNCITRAL Model Law on Electronic Commerce of 1996 had had a wide impact and had become the only source of legal rules which the various states of her country had to draw on in common.

58. Thirdly, her country was now prepared to consider ratification of the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit if

a sufficient number of other States seemed likely to consider similar action. The benefits of that Convention, not only for banking systems but also for commercial parties, were generally recognized.

59. Finally, she noted that the Commission secretariat was continuing its efforts to bring those texts and the Commission's work to the attention of many countries, especially in the developing and emerging markets. The importance of that work could not be overestimated and the secretariat should not only maintain but also increase such assistance within available resources.

60. **Mr. Šmejkal** (Czech Republic) said that his delegation fully supported the statement made on behalf of the European Union and merely wished to make some additional observations on some of the issues dealt with in the Commission's report.

61. The work of the thirty-first session had focused largely on the first four chapters of the draft legislative guide on privately financed infrastructure projects, which was a highly topical subject in the context of increasing competition to attract foreign investment for such projects.

62. Since the substance of chapters V to XI of the draft guide was not due to be discussed until the following year, his delegation considered that it would be premature at the present stage to comment in detail on the substance of the Commission's deliberations on the first part of the text, but that the form and structure of the future legislative guide should be considered, together with the methodology to be followed.

63. In that context, his delegation was not convinced of the desirability of including model legislative provisions in the guide since that would make it more like a model law, which would be a more ambitious and less flexible outcome than had originally been intended. His delegation considered that the objectives of the legislative guide would be better served by the incorporation of general guidelines rather than model legislative provisions which might be difficult to apply in the widely varying environments of the various national legal systems.

64. His delegation therefore supported the Commission's approach of adopting model legislative provisions only where that was possible and appropriate. Moreover, the establishment of a working group, originally envisaged for the start of 1999, would be premature; the Commission should complete its first reading of all or most of the draft before entrusting the text to a working group.

65. His delegation supported the Commission's decision to prepare uniform rules on digital signatures. It was not, however, in favour of a convention, which might reopen matters settled in the UNCITRAL Model Law on Electronic Commerce and thus indirectly weaken it. His delegation welcomed, on the other hand, the introduction of a new article 5 *bis* on incorporation by reference, which usefully complemented the Model Law by explicitly reaffirming in that particular case the general principle of neutrality contained in article 5. It was to be hoped that in the future the Working Group would consider certain legal aspects of Internet use, such as the issues of jurisdiction, applicable law and dispute settlement.

66. Lastly, his delegation believed that the Commission should devote two or three days at its next session to discussing future options for international commercial arbitration. The 1961 European Convention on International Commercial Arbitration was under review and it might be worth considering updating the 1958 New York Convention or the UNCITRAL Model Law on International Commercial Arbitration. There was no shortage of topics worth discussing: a new definition of "writing", the question of tacit agreement and interim measures of protection and, in relation to the Model Law, the question of the arbitrator's powers on penalty interest, the payment of expenses, protection against personal liability for arbitrators, document confidentiality or procedure, for example.

67. **Mr. Mwangi** (Kenya) said that the growing body of high-quality legal texts that it produced provided clear testimony that the Commission should remain the core legal body for the unification and harmonization of international trade law.

68. The establishment of a favourable legal environment to promote public infrastructure development through the interaction of public and private investment was crucial. His delegation believed that the legislative guide under elaboration by the Commission should be kept simple, taking the form of an analysis of the relevant issues, together with legislative recommendations. It was pleased to note that the Commission recognized the importance of establishing a balance between attracting private investment and protecting the interests of the host Government and the user of the infrastructure. However, it might be necessary to adopt a fairly flexible formulation in order to allow parties leeway in dealing with all kinds of situations. With regard to the remaining chapters of the draft guide, the level of interest in the topic and the limited expertise available from developing countries were such that the discussions should not be entrusted to a working group.

69. The importance of training and technical assistance in promoting awareness of the Commission's work and

disseminating information on the legal texts that it had produced could not be overemphasized. The substantial decrease in the funds available in the UNCITRAL Trust Fund for Symposia was therefore of concern, since it prevented the Commission secretariat from fully discharging its mandate to provide training and technical assistance programmes for developing countries. The Commission's work could not be discontinued at a time when the demand for such programmes was on the increase.

70. Full participation in the Commission's deliberations was also important to the successful harmonization of international trade law. Regrettably, the appeal for voluntary contributions to the trust fund for travel assistance to developing countries that were members of the Commission had yielded no response. If the Commission's mandate was to be taken seriously, contributions to both funds should be encouraged and he called on the secretariat to explore other initiatives aimed at providing opportunities for increased participation by developing countries in the Commission's work.

71. His delegation also wished to see stronger representation by developing countries in the geographical distribution of the Commission's internship programmes. The secretariat should identify funding sources that could be put at the disposal of interns from developing countries, thus alleviating the current disproportionate representation.

72. He associated his delegation with the sentiments expressed by the Chairman the previous day on the need to involve Commission legal experts in legal reform activities funded by the multilateral and bilateral funding agencies, if for no other reason than that it would save the cost of hiring expensive experts.

73. Lastly, he called on the Legal Counsel to increase his efforts to restore the Commission secretariat in Vienna to its previous strength and to look into the concerns regarding promotion in the professional posts.

74. **Mr. Zhdanovich** (Belarus) paid tribute to the Commission, the results of whose work – not least in 1998 – showed it to be one of the United Nations bodies which had a direct impact on every State. He hoped that work on the draft convention on assignment in receivables financing would be completed very shortly, since the establishment of guarantees for potential investors, both domestic and foreign, was of great importance for his country in the interests of establishing a favourable investment climate. His delegation would gladly take an active role in preparing the document.

75. It was gratifying that work had started on a guide fo privately financed infrastructure projects. Such a guid would constitute a useful tool for Governments in reviewin and modernizing their legislation on the matter, particularl in countries with economies in transition, whose experienc in the field was still limited. Despite some views to th contrary, the Commission should continue to consider th question of formulating model legislative provisions, at th same time indicating instances in which the formulation o such provisions would increase the value of the legislativ recommendations contained in the guide. He also welcome the work on electronic commerce; rules on electroni signatures and incorporation by reference were importan issues. As to chapter V of the report, his delegation attache great importance to further work on monitoring th implementation of the 1958 New York Convention, and hi country had replied to the questionnaire on the subject.

76. His delegation attached great significance to trainin and technical assistance and to the status and promotion o UNCITRAL texts, particularly through regional seminar and meetings; the presence of countries with economies i transition, which would especially benefit from briefings fo legislators, judges and other users of UNCITRAL texts, wa essential at such meetings and seminars. The placing of search engine on the Web site of the UNCITRAL secretaria on the Internet was also most welcome; in particular, th publication of case law on UNCITRAL texts (CLOUT) i all six official United Nations languages was invaluable t both academics and Governments. Lastly, he stressed th importance to Belarus of technical assistance in draftin legislation on the basis of conventions, model laws and othe trade law texts.

77. **Mr. Korzachenko** (Ukraine) stressed th Commission's importance in promoting economic prosperit and development. The economic health of the worl depended on the creation of appropriate mechanisms t strengthen international trade. His delegation hoped that th financial crisis sweeping through nations and continent would not deflect the Commission from its principal task o promoting higher standards of trade interaction. Within th reform process of the United Nations, the Commission itsel should decide how and whether to introduce changes to it schedule, agenda or methods of work.

78. His delegation was pleased that work had started o preparing a legislative guide on privately financed infrastructure projects, which would constitute a useful too for the Government of Ukraine in updating its nationa legislation on such projects. There were doubts, however as to the practicability of elaborating model legislativ provisions on issues covered by the guide, since such

provisions would have a rather limited application, given the complexity of the legal issues involved and the diversity of national legal traditions and administrative practices. A clear set of legislative recommendations, followed by an explanatory discussion of the pertinent issues and possible options, would be more useful.

79. His delegation noted with interest the ongoing debates in the Commission on the desirability of preparing an international convention based on provisions of the UNCITRAL Model Law on Electronic Commerce. It believed, however, that the elaboration of draft uniform rules on electronic signatures should remain the priority of the Working Group on Electronic Commerce; the issue of a draft convention could be discussed at a later stage. With regard to the question of a new clause on incorporation by reference in the Model Law, his delegation supported the interpretation of the provision as being that it would not create a specific legal regime for incorporation by reference in an electronic environment. He also urged the Commission to proceed expeditiously with its work on preparing a draft convention on assignment in receivables financing.

80. His delegation appreciated the Commission's work in monitoring the implementation of the 1958 New York Convention and on CLOUT and the status and promotion of UNCITRAL texts, which were particularly beneficial to countries with economies in transition. Ukraine also attached great importance to the question of training and technical assistance from the Commission. Such activities were of great help in passing on the necessary expertise in the field of international trade law. Indeed, they should be expanded to include more developing countries.

81. **Mr. Von Kaufmann** (Canada) said that among the notable achievements of UNCITRAL during its recent session were the holding of the New York Convention Day and of the Uniform Commercial Law Information Colloquium. The two conferences had provided a forum in which to publicize the work of UNCITRAL, exchange views on the application of existing UNCITRAL instruments and discuss directions for possible future work.

82. His delegation was participating actively in the work of the Working Group on Electronic Commerce, an area in which his Government hoped soon to have legislation in place. His delegation was also taking an active role in the development by the Working Group on International Contract Practices of a draft convention on assignment in receivables financing. Canadian practitioners had expressed interest in uniform international rules in that area, and the future convention would be a significant boon to many States. His delegation looked forward to the finalization of the text by 2000.

83. The importance of collaboration between UNCITRAL and other international organizations and associations should also be highlighted. For example, the expertise of the Hague Conference on Private International Law had contributed to the draft convention on assignment in receivables financing, while the International Maritime Committee was working with the secretariat in preparing for possible future work on the law of the international carriage of goods.

84. **Ms. Hallum** (New Zealand) said that the consideration of the UNCITRAL report by the Sixth Committee provided a useful opportunity for delegations to take stock of the Commission's work. UNCITRAL played a very important role in promoting the uniform development of international trade law and the removal of legal obstacles to the flow of international commerce. The complex and specialized nature of the Commission's work meant that Member States and observers were often reliant on the advice and support of the UNCITRAL secretariat. Her delegation also voiced its support for the valuable role of the secretariat in the areas of training and technical support, particularly in view of the Commission's mandate to provide assistance to developing countries.

85. Her delegation was particularly interested in the Commission's work in the area of electronic commerce. Technological developments had profoundly changed the commercial landscape; it was vital for the international legal community to keep pace with those developments and ensure that the legal frameworks in place could accommodate the new commercial environment.

86. Recently, the Working Group on Electronic Commerce had focused on the preparation of uniform rules on the legal issues of digital signatures and certification authorities. Her delegation took note of the comments contained in the UNCITRAL report concerning the difficulties of reaching a common understanding of the legal issues involved and a consensus as to how those issues should be addressed in an internationally acceptable framework. In view of the rapid development and fluidity of the topic, such difficulties were not surprising. It was significant, however, that the Working Group had been recognized as an important forum for discussion of those issues, which, it was to be hoped, would eventually be overcome.

87. The New Zealand Law Commission had recently completed its first study on the subject of electronic commerce and had issued a report which was available on the Internet at www.lawcom.govt.nz. That report drew

substantially on the UNCITRAL Model Law and other work by UNCITRAL.

88. Her delegation was of the view that the uniform rules should not seek to over-regulate the use of electronic signatures. That was particularly relevant insofar as the setting of minimum standards for certification was concerned. Such standards should be sufficiently low so as to preserve the choice of individual parties regarding the level of security they wished to apply to a particular transaction. Such flexibility was necessary if the use of electronic commerce was to be encouraged.

89. Another issue that had arisen was whether there should be a convention based on the Model Law and the draft uniform laws on electronic signatures. Her delegation shared the prevailing view in the Commission that it would be premature to prepare such a convention given the rapidly developing nature of the subject matter, and that it would be better to deal with it in the form of a model law.

90. A number of topics on the Commission's agenda, including electronic commerce, were being considered simultaneously in other forums, including regional organizations. The General Assembly had continually stressed the importance of close coordination with other international and regional organizations in the area of trade law and the need to promote efficiency, consistency and coherence in the work of the various organizations involved. In view of the increased interest in the harmonization of international trade law, it was particularly important that practical options for cooperation, such as the granting of observer status to international and regional organizations or joint expert meetings, should be fully explored.

91. **Mr. Natalegawa** (Indonesia) said that UNCITRAL played a pivotal role in meeting the numerous challenges of increasing globalization and all of its attendant consequences, particularly for developing countries. More than ever before, it was vital that developing countries should have a greater opportunity to participate in the work of UNCITRAL. Furthermore, UNCITRAL should reflect on those issues that were of profound concern to the international community, including the needs and interests of developing countries.

92. His delegation noted with satisfaction that UNCITRAL had held a general discussion of the draft legislative guide on privately financed infrastructure projects. The guide offered potential benefits to countries in updating and codifying national laws, particularly for those States which lacked expertise and experience in the execution of such projects. His delegation looked forward to the Commission's further endeavours in that field and noted the possible need for the establishment of a working group to undertake a study in depth of the relevant chapters of the guide. His delegation also emphasized the need for the representation of experts from developing countries in the proposed working group.

93. His delegation was encouraged by the Commission's efforts in the area of electronic commerce. The preparation of uniform rules on the legal issues of electronic commerce was a complex task. His delegation noted the difficulties encountered in reaching a common understanding of the issues arising from the increased use of digital and other electronic signatures. Nevertheless, the progress achieved thus far was a positive sign.

94. Lastly, satisfying progress had been made in the Commission's training and technical assistance activities. The holding of seminars and briefing missions was of immense benefit to developing countries that were preparing national legislation based on UNCITRAL model laws in such areas as commercial arbitration, procurement and international credit transfers. Those activities, and others involving the promotion of UNCITRAL legal instruments and the furtherance of their uniform interpretation and application, were among the most significant aspects of the United Nations Decade of International Law. It was to be hoped that the necessary financial resources could be mobilized so that further training activities could be undertaken, especially in developing countries.

95. **Mr. Akbar** (Pakistan) noted with satisfaction that at its thirty-first session the Commission had approved the structure of the draft legislative guide on privately financed infrastructure projects. It was to be hoped that the Commission's work would assist States in preparing or modernizing legislation relevant to those projects at various levels. His delegation appreciated the emphasis placed on maintaining a balance between the objective of attracting private investment for infrastructure projects and the protection of the interests of the host Government and users of the infrastructure facility.

96. The preparation of draft uniform rules on electronic signatures was an extremely important issue with wide ramifications for electronic commerce. It was to be hoped that UNCITRAL would continue its efforts to reach a consensus on that issue within an internationally acceptable legal framework. His delegation noted with satisfaction the offer made to UNCITRAL by the United Nations Conference on Trade and Development (UNCTAD) to cooperate on rules relating to electronic commerce. The interest shown by UNCTAD in the question of how better to integrate

developing countries into international electronic commerce was particularly welcome.

97. His delegation attached great importance to the Commission's work in the area of assignment in receivables financing, including the validity of assignments of future receivables and of receivables not identified individually. That topic was of considerable importance to developing countries which were encouraging foreign investment and liberalizing their economic policies. The formulation of clear and definite rules would facilitate the availability of credit financing for private and public sectors at more economical rates.

98. His delegation looked forward to the completion of the work of the Working Group on International Contract Practices by 1999.

99. His delegation noted the possibility of cooperation between UNCITRAL and the International Maritime Committee in carrying out exploratory work on current practices and laws in the area of international carriage of goods by sea.

100. His delegation, which believed that efforts should be made to ensure the effective participation of developing countries in the work of UNCITRAL, noted with concern that UNCITRAL was facing difficulties in the execution of training programmes. The Commission should endeavour to execute such programmes effectively so as to open up further possibilities for developing countries to benefit from its work.

101. His delegation also appreciated the Commission's continuing efforts to make its presence in cyberspace more effective. UNCITRAL should be aware of the need for further improvements in its Web page. Regular updates, particularly while meetings were being held, would be of great value to Member States. The Commission should also consider posting on the World Wide Web the record of its special commemorative meeting held on 10 June 1998 to celebrate the fortieth anniversary of the New York Convention. Similarly, the proceedings of the Uniform Commercial Law Information Colloquium held on 11 June 1998 should also be made available on the Web.

102. **Mr. Mazilu** (Chairman of the United Nations Commission on *International Trade Law) assured the* members of the Committee that UNCITRAL would take note of the suggestions made during the Committee's debate. In order for UNCITRAL to develop uniform rules, it must take into account the views of all States, including developed countries, developing countries and countries whose economies were in transition. With regard to the need to expand UNCITRAL training activities, to which many delegations had referred, he appealed to Member States to provide new resources to strengthen the UNCITRAL secretariat.

103. **The Chairman** said that the Committee had concluded its consideration of the agenda item.

The meeting rose at 5.35 p.m.